

ORDINANCE NO. 2020-XXXX

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA ADOPTING TEMPORARY ZONING AND DEVELOPMENT ENTITLEMENT MODIFICATIONS TO SAFELY EFFECTUATE STATE AND REGIONAL PUBLIC HEALTH ORDERS IN CONJUNCTION WITH RECOVERY AND REOPENING EFFORTS DUE TO THE NOVEL CORONAVIRUS (COVID-19)

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease that may result in serious illness or death, and is easily transmissible from person to person; and

WHEREAS, on January 31, 2020, the United States Department of Public Health Human Services Secretary, Alex Azar, declared a public emergency related to the COVID-19 outbreak beginning on January 27, 2020; and

WHEREAS, on February 14, 2020, the San Diego County Public Health Officer declared a local health emergency due to the threat of COVID-19; and

WHEREAS, on February 19, 2020, the San Diego County Board of Supervisors ratified the Declaration of Local Health Emergency and Proclamation of Local Emergency arising out of the COVID-19 outbreak; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist in the State of California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20, which exercised authority pursuant to the Emergency Services Act, Government Code section 8550, *et. seq.*, including an order to ensure adequate facilities exist to address the impacts of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 16, 2020, the City Manager, acting in his capacity as Director of Emergency Services of the City, proclaimed the existence of a Local Emergency related to COVID-19 within the City, and activated the San Marcos Emergency Operations on that date; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ("Stay-at-Home Order"), which required that all individuals living in the State of California remain at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors; and

WHEREAS, on March 20, 2020, the City Council adopted Resolution No. 2009-7140, ratifying the declaration of the Director of Emergency Services and declaring the existence of an ongoing local emergency pursuant to COVID-19; and

WHEREAS, the Health Officer of the County of San Diego issued an order on April 10, 2020, which was extended on April 30, 2020, requiring individuals to remain at their place of residence, except for employees or customers travelling to and from essential businesses or activities; prohibiting all public or private gatherings; closing all non-essential businesses; and prohibiting all schools from holding classes or school activities; and

WHEREAS, on April 28, 2020, Governor Newsom announced four “Resilience Roadmap Stages” that California will use to guide its gradual reopening process. The four stages are: 1) Safety and Preparedness, 2) Lower Risk Workplaces, 3) Higher Risk Workplaces, and 4) End of Stay-at-Home Order; and

WHEREAS, on May 7, 2020, Governor Newsom announced that the State of California will move into Stage 2 of the Resilience Roadmap Stages and released updated public health guidance for commercial retail, industrial manufacturing, and logistics businesses that allow for certain lower-risk workplace businesses to reopen on May 8, 2020, pursuant to the guidelines and operational conditions provided by the State to continue to protect the health and safety of employees and the general public. Governor Newsom also announced new guidelines that allow counties to pursue a variance to move further into Stage 2 of the Resilience Roadmap Stages if they attest that they meet the State’s readiness criteria. Although the State and local agencies have authorized economic recovery and reopening efforts in stages, subsequent stages of which are anticipated to be authorized in the coming weeks and months, such authorizations will not fully mitigate the COVID-19 pandemic’s adverse effects on businesses, employers, residents, and visitors; and

WHEREAS, on May 10, 2020, the Health Officer of the County of San Diego issued an order, which provides in part that, upon reopening, every business must prepare and post a “Safe Reopening Plan” for each of its facilities in San Diego County; and

WHEREAS, as of May 18, 2020, the numbers of reported positive cases of COVID-19 and related deaths in San Diego County have increased to 6,026 and 222, respectively, and both numbers are expected to increase; and

WHEREAS, on May 21, 2020, the City Manager, acting in his capacity as Director of Emergency Services of the City, issued an order adopting temporary zoning and entitlement modifications to safely effectuate state and regional public health orders in conjunction with recovery and reopening efforts due to COVID-19; and

WHEREAS, many local businesses and employers in San Marcos have experienced and anticipate to continue to experience sudden, drastic, and unexpected revenue or income loss due to temporary business closures and/or reduced operations as a result of the public health emergency, statewide Stay-at-Home Order, state and local public health orders, and the precautions recommended by health authorities; and

WHEREAS, an increase in closed businesses and/or modified business activity, either temporarily or permanently, has had and will continue to have an immediate and potentially long-

lasting impact on the financial stability of San Marcos's businesses and on several of the City's most significant revenue sources, including sales tax, transient occupancy tax, property tax, and commercial rent payments, which will have a debilitating effect on economic security and public health and safety for the City as a whole; and

WHEREAS, as a result of certain actions by the State and the San Diego County Public Health Officer, staged re-opening of businesses is poised to occur while the battle against the COVID-19 virus continues, necessitating revised rules and regulations to ensure such re-opening is consistent with the restrictions which remain in place, as public health orders still require social distancing and various other health and safety measures to reduce the spread of the virus to the extent possible; and

WHEREAS, given the immense health threat caused by COVID-19 and the need to take extraordinary measures to continue to prevent its spread and protect public health and safety, many businesses and employers have expressed a need for additional local action in response to the State and County's plans to gradually reopen commercial retail, dine-in restaurants, industrial manufacturing, and logistics businesses; and

WHEREAS, it is necessary to facilitate compliance with all applicable State and County public health orders and associated guidelines, increase and improve patron and pedestrian mobility and access to reopened businesses, maximize the use of available open public or semi-public spaces to facilitate business engagement practices that comply with social distancing requirements, provide special accommodations for additional signage and modifications regarding business hours, closures, and on-site risk reductions measures, and promote stability among commercial retail, dine-in restaurants, industrial manufacturing, and logistics businesses, thereby allowing businesses and employers to decide whether and how to reopen safely, providing income to employees and necessary services to residents, all necessitated by reason of the COVID-19 pandemic; and

WHEREAS, the City Council has the power under Government Code sections 36934 and 36937 to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Ordinance as such an urgency ordinance, as set forth in the above recitals, which are incorporated herein by reference, and pursuant to the powers under Government Code sections 36934 and 36937, for the immediate preservation of the public health and safety, as affected by the emergency caused by the spread of COVID-19; and

WHEREAS, this Ordinance is exempt from review under the California Environmental Quality Act (CEQA; California Public Resources Code Section 2100 et seq.) and CEQA regulations (Title 14, California Code of Regulations Section 15000, et seq.) because CEQA does

not apply to projects that require specific actions necessary to mitigate an emergency (Section 15269(c));

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. The foregoing recitals are true and correct and are incorporated herein as though set forth in full at this point.

Section 2. Resolution 2009-7140 ratifying the local emergency declaration of the Director of Emergency Services and declaring the existence of an ongoing local emergency related to COVID-19, Executive Orders N-25-20 and N-33-20, and the Health Officer of the County of San Diego's May 10, 2020 Order, and all associated public health orders, are hereby incorporated into this Ordinance as though fully set forth herein.

Section 3. The conditions that prompted Resolution 2009-7140 and the Director of Emergency Service's May 21, 2020, Order adopting temporary zoning and entitlement modifications to safely effectuate state and regional public health orders in conjunctions with recovery and reopening efforts due to COVID-19 continue to exist. The declaration of the local emergency and the numerous similar declarations at all levels of state and national governments reflect the current and continuing health and financial circumstances due to the COVID-19 pandemic. In the interest of protecting public health and safety and reducing the spread of COVID-19 and loss of life, property, and essential services during the gradual reopening process, it is necessary to establish a series of temporary zoning and development entitlement modifications to otherwise mitigate the adverse effects of COVID-19 among all residents, businesses, and visitors of San Marcos.

Section 4. During this state of local emergency, and throughout the State's Resilience Roadmap Stages, applications for the temporary zoning and development entitlement modifications set forth in Exhibit A, which is attached hereto and incorporated herein, may be processed by Development Services, and approved if all applicable conditions and requirements are successfully met.

Section 5. All businesses that reopen with an approved revised regulatory framework pursuant to this Ordinance shall comply with all requirements set forth in this Ordinance and all applicable State and County statutes, orders, regulations, and guidelines that remain in effect, as well as the approval issued by Development Services pursuant to this Ordinance. All determinations issued by the City Manager and/or Development Services shall be final regarding whether a proposed modification complies with this Ordinance and all applicable State and County statutes, orders, regulations, and guidelines, and as to whether the application is approved or denied.

Section 6. All Temporary Outdoor Business Permit and Special Event Permit applications submitted in connection with this Ordinance shall be processed administratively and are therefore not subject to the public notice requirements set forth in Government Code section 65090, *et. seq.*, and Chapter 20.505 of the San Marcos Municipal Code.

Section 7. This Ordinance is effective upon adoption and shall remain in effect until: (1) the termination of the local emergency pursuant to Resolution 2009-7140; or (2) the termination of the “Stay-at-Home Order” in the State of California, as set forth in Executive Order N-33-20, whichever occurs later in time.

Section 8. All ordinances or parts of ordinances in conflict with this Ordinance are hereby temporarily suspended, effective immediately and until the expiration of this Ordinance, unless stated otherwise. Upon the expiration of this Ordinance, the temporary zoning and development entitlement modifications shall be deemed terminated and of no further force or effect. All rights and obligations under this Ordinance and/or the revised regulatory documents issued thereunder shall terminate upon its expiration, save the requirement for insurance and indemnification in favor of the City, which obligations shall remain effective through the expiration of all applicable statutes of limitation.

Section 9. This is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines pursuant to Public Resources Code (“PRC”) section 21080(b)(4) and the exemption in CEQA Guidelines Section 15269(c). CEQA Guidelines Section 15269(c) provides that projects that require specific actions necessary to mitigate an emergency are exempt from CEQA. PRC Section 21060.3 defines emergency as a “sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” COVID-19 suddenly and rapidly spread throughout California and San Diego County, causing peril to the health, safety, and welfare of the residents of San Marcos. Government efforts to curb the spread of COVID-19, such as required closures and the Stay-at-Home Order, caused sudden significant economic hardship to local businesses and affected the City’s operations and delivery of essential public services. Although state and local agencies have authorized economic recovery and reopening efforts in stages, subsequent stages of which are anticipated to be authorized in the coming weeks and months, such authorizations will not full mitigate the COVID-19 pandemic’s adverse effects on businesses, the City, and the public, certain businesses and essential City services. Additionally, staged re-opening of businesses is poised to occur while the battle against COVID-19 continues, necessitating that the City adopt revised rules and regulations to ensure such re-opening is consistent with the State and County Orders which remain in place, as public health orders still require social distancing and various other health and safety measures to reduce the spread of COVID-19 to the extent possible. Thus, the COVID-19 pandemic is an emergency as defined in PRC Section 21060.3, and the recovery plan outlined herein is necessary to mitigate that emergency. For these reasons, this Ordinance is exempt from CEQA pursuant to PRC section 21080(b)(4) and CEQA Guidelines Section 15269(c).

Section 10. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 11. Pursuant to Government Code section 36937, this Ordinance shall be effective immediately upon its adoption. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published, or the title thereof as a summary, in accordance with the provisions of State law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the 26th day of May, 2020, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

APPROVED:

Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Phillip Scollick, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos